

August 9, 1999

Ms. Char Hauger
U.S. Army Corps of Engineers, St. Paul District
Army Corps of Engineers Centre
190 Fifth Street East
St. Paul, MN 55101-1638

RE: 94-01298-IP-DLB

Dear Ms. Hauger:

I wish to thank you for the opportunity to review and comment on the drafts of the Statement of Responsibility (SOR), Scope of Work (SOW) and the Disclosure Statements (DS) regarding the use of a third party contractor for the writing of the federal Environmental Impact Statement (EIS) for the Crandon Mine Project. In following EPA's role in this project as a reviewer of the project's EIS documents, below, we offer suggestions and comments on the above documents.

Statement of Responsibility:

1) B. General Provisions, #2 and #6: these two provisions make it clear that the EIS contractor is under the sole direction of the U.S. Army Corps of Engineers (COE). They state that the third party contractor is under the direct supervision and control of the COE, that the COE will select the EIS contractor and that changes in principals and subcontractors will require prior approval by the COE. They also state that the EIS contractor is obligated to follow the directions of the COE and not the Applicant and that the Applicant will not direct the modification or inclusion of any data, evaluations or other materials pertinent to the preparation of the EIS. These statements are then conflicted with statements found within the Project Management - Section II of the SOW. Particularly, within the first paragraph of Section II on Page 2, it states that the permit applicant will pay for the EIS and "administer" the contract. This conflicts with #6 of the SOR Section B where it states that the role of the Applicant is the same as it would be if the process were being entirely performed by COE personnel, with no financing by the Applicant. Also, within the first paragraph of Section II of the SOW, it states that the term "EIS Contractor" shall refer to the company hired by NMC to perform the required services. The word "hired" gives the impression that NMC may play more of a role than just financier. Within the third paragraph of Section II of the SOW, it states that if changes to the scope of services are determined to be necessary, the COE and NMC must approve the scope changes. If NMC is not

to be involved in anything besides the financial aspects of the contract, then scope of work changes should be only up to the COE for approval.

2) B. General Provisions, #4: This provision states that the EIS contractor reports only to the designated COE representative, the COE Project Manager. An additional point needs to be stated for the record that at no time will the EIS contractor meet or discuss issues with the Applicant without COE presence.

3) B. General Provisions, #11: The EPA is requesting that eight (8) copies of the Preliminary Draft EIS and associated documents be provided.

4) B. General Provisions, #13: The COE will file the Final EIS with the EPA. The COE must follow the general EIS submittal protocol. EPA also wishes to receive eight (8) copies of the Final EIS through the normal Crandon Mine Project distribution route.

Attachments:

5) Attachment A: Firm Experience: COE may wish to include the conflict of interest issues with the applicant and applicant's subcontractors within the evaluation criteria listed.

6) Attachment B: See SOW comments below.

7) Attachment D was not reviewed as it was not received from COE as part of this correspondence.

Scope of Work:

8) II. Project Management: See comment 1 above. Also, the sixth paragraph of this section it states that the EIS Contractor shall submit a status report to both the COE and to NMC. If NMC is to be nothing more than the financing body of this agreement, they should not be getting anything more than the financial statements. If the Applicant gets progress reports on the status of the project, then the other interested parties should also be on that distribution list.

9) III. Specific Tasks: Task 1. Scoping Document: The last sentence of this section, on page 4, states that the Scoping Document will be incorporated into the DEIS as an appendix, with a summary in Chapter 8. The descriptions of the chapters later in this SOW indicate that the Scoping Document will be summarized in Chapter 7.

10) III. Specific Tasks: Task 2.1: As part of the compilation and review of existing information, the EIS contractor should also be tasked to review all of the comments provided by the tribes, agencies, the public and other interested parties (as indicated in the COE Supplied Information list on page 5), and as part of the report or as part of an appendix to the DEIS, indicate if the comment has been responded to, how it was responded to, if further action is needed to respond fully to the comment, or if due to changes in the plan, the comment is no longer pertinent.

- 11) III. Specific Tasks: Task 2.1: Under the Applicant Supplied Information, the TMA documents (Tailings Management Area Feasibility Report/Plan of Operation and the 5 addenda) need to be listed.
- 12) III. Specific Tasks: Task 2.1: Under the COE Supplied Information, in addition to the comments provided by tribes, agencies, public, and other interested parties, this listing should also include reports submitted by these groups, for example, the report on the Bur Oak Swamp by George Howlett, Menominee Tribe.
- 13) III. Specific Tasks: Task 2.2: Identification of Information Needs: The Data Needs Report should be submitted, when approved by COE, to not only the Applicant but to all the tribes and agencies as well.
- 14) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: D. Chapter 2(1) on Page 8: The contractor should also describe the alternative wastewater disposal system (pipeline to the WI River) as this is still a viable option, even though it is no longer the Applicant's preferred option. EPA is not aware if all the previous permits and applications regarding the pipeline have been officially withdrawn by the Applicant or not, but if not, this option needs to be included within the DEIS/EIS. Chapter 3 may be the more appropriate place for this.
- 15) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: D. Chapter 2 (3) on Page 8: Under the closure and reclamation, the EIS contractor should also be evaluating methods for early or temporary closures.
- 16) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: D. Chapter 2(4) on Page 8/9. The waste characterization also needs to look into waste compatibility and reactivity including, but not limited to, the chrome issues highlighted by Mr. Clem Zidick. (If you need copies of his correspondence to WDNR and EPA, please let me know.)
- 17) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS. D. Chapter 2(5) on Page 9. This topic (environmental monitoring) deserves more than a brief summary as called for in this section.
- 18) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: D. Chapter 2(6) on Page 9: Will this section also include a summary of the Applicants Wetland Compensation Plan? This should be included either within this chapter or under chapter 5(2)(d)(1): Biological Resources; Wetland and Aquatic Ecology on Page 12.
- 19) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: E: Chapter 3(2)(b) on Page 10: Under the design alternatives (or other pertinent section) regarding the alternative mitigation measures section, an additional sub-section needs to be added that evaluates what impacts, if any, the mitigation measures may cause to the surrounding environment. For instance, the surface water mitigation pipeline may cause local damage to the receiving creek's stream bed.

20) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: F: Chapter 4(1) on Page 10: The air redesignation being sought by the Forest County Potawatomi needs to be summarized in this section as it relates to the project.

21) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: G: Chapter 5 on Page 11: In the second sentence, it states that the EIS contractor shall evaluate the effects of the applicant's preferred alternative for both the "best engineering judgement" and "probable worst case" scenarios, when appropriate". EPA suggests that the COE further define what "when appropriate" covers in this matter. Also, an additional major issue that should be added to the list on Page 11 is the long-term stability of the TMA. This goes further than the second bullet which is concerned with the mobilization of sulfates, nutrients, metals and other contaminants. Also, the 4th bullet of this section highlights the issue of Tribal trust responsibilities, sociocultural impacts on local Tribal communities, and the potential impact on traditional cultural properties. Will the EIS contractor be evaluating this issue (COE has already determined this to be a major issue) and be analyzing the impacts related to this issue? This seems to be inconsistent with the language found elsewhere in the SOR and SOW where the COE states that the COE is responsible for trust issues. In addition, in the SOR, the COE Contractor Evaluation Criteria does not emphasize that the contractor needs to have the expertise and experience in tribal impacts and risk assessments. For these reasons, the COE may wish to make it clearer in this SOW who will be developing the impact assessments regarding impacts to Tribal resources.

22) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: G: Chapter 5(2) on Page 12: Section (a) on Air Quality should spell out that the EIS contractor shall predict and analyze the effects on air quality from the construction, operation and closure of the proposed mine **and related facilities**. This is so that it is understood that more than just the exhaust from the mine shafts if of concern with regard to air quality.

23) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: G: Chapter 5(2) on Page 12: Under (d)1, the SOW states that this section shall include the following assessments: (1) direct impacts on wetlands, streams, and lakes from the mine construction and operation. This should be revised to also include impacts due to closure, reclamation and mitigation (not just with and without mitigation, but also what the mitigation may cause). Also, for clarity, the phrase "mine construction" needs to include not only the mine but also all related facilities. Under both 2) and 3), concerns of impacts caused by the drawdown of local groundwater are assessed. In addition to the drawdown concerns, a prediction and analysis of the succession of plant communities due to the rise in groundwater near the soil absorption system over the life of the mine and after mine closure should also be considered. Also, see comment 18 above regarding the Wetland Compensation Plan.

24) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: G: Chapter 5(2) on Page 14: Under (g) Cumulative Effects; should the COE consider the potential of the opening of other mines in the area as a reasonably foreseeable action that may occur due to the actions of others? If this mine is permitted, other mine's still have to go through an extensive state and federal

process, but with the precedent set for the types of studies needed and the what is expected of the mining companies, it may be easier for new mines to open in the surrounding area. Regardless, if it is easier or not for other mines to get permits after the Crandon Mine is operating, the EIS should look into where other mine(s) may be located and what impacts these mines in the vicinity could cause, i.e., additional groundwater drawdown, additional impacts to the Tribes, etc.

25) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: G: Chapter 5(4) on Page 14: This section highlights compliance with other laws and statutes stating that the EIS contractor shall evaluate the proposed project and documentation for compliance with applicable environmental statutes and Executive Orders. Under the Clean Water Act, National Pollution Discharge Elimination System (NPDES) requirements as well as Underground Injection Control requirements will need to be evaluated. Also, Executive Order 12898 regarding Environmental Justice will need to be covered either under this section or elsewhere within the DEIS.

26) III. Specific Tasks: Task 3.1: Preparation of PDEIS and DEIS: L: Appendices, Page 16: Under (4) Appendix D the EIS contractor shall consolidate all baseline data that has been collected and prepare a list of what, where, when, and who collected the data; where the data can be found and what summary reports are available; etc. One possible topic that fits this issue is the evaluation of radiological sampling and reporting within the EIR. Though the radiological hazard issue seems to have been put to rest by the Applicant and by the WDNR, EPA still feels that, though the overall human health and ecological risk may be low or non-existent, the proper documentation of these determinations has not been provided thus far. The EIS contractor should summarize all the radiological data provided by the Applicant and others and provide a summary of findings and an overall human health and ecological risk determination. I have enclosed an issue briefing written by Phil Wicklein, an EPA grantee, further explaining the overall radiation issue associated with not only the Crandon Mine project, but all mining projects in general. If COE decides that the EIS contractor is not the appropriate party to do this summary, EPA encourages COE to have the Applicant follow up on this issue. This issue could also be addressed under Tasks 2.1 (Data Collection) or 2.2 (Identification of Information Needs) of the SOW.

27) III. Specific Tasks: Task 3.2, COE Review on Page 16/17: COE, in an effort to save paper, should mandate that the EIS Contractor provide all deliverables/reports printed with double-sided pages. See Comment 4 above regarding number of copies requested by the EPA.

28) III. Specific Tasks: Task 3.3: Distribution: Pages 17/18: The COE is limiting the EIS contractor to a DEIS of less than 300 pages, with appendices accounting for an additional approximate 150 pages. EPA suggests that COE should emphasize that these are guidelines and that if more pages are needed to accomplish the objective of the EIS, then this matter can and should be discussed and agreed upon between the COE and the EIS contractor. Also, as stated in the last line of this section, the COE will file the DEIS with the U.S. EPA. Please submit eight (8) copies to me in addition to following the official EIS submittal protocol.

29) III. Specific Tasks: Task 5.1: Preparation and Distribution of FEIS: Page 19: Same comment as in Comment #28 above, regarding length of the EIS and appendices. Also same comments regarding filing the FEIS with the U.S. EPA.

30) IV. Deliverables: Page 20: In the first paragraph it states that the public review period for the DEIS is expected to extend for 60 days. Though it does not really matter what time frame is written within this SOW regarding the length of the public comment period, EPA suggests that the COE should consider, based on past experience and the copious amounts of background material on this project, that 60 days will most likely not be sufficient. Six months would be a more likely starting time period for the initial DEIS public review. The third paragraph of this section would be an appropriate place to again mention that deliverables should be printed on both sides of the page.

Thank you for the opportunity to provide you with comments on these documents. If you have questions on any of them, please do not hesitate to call me at 312-886-7252.

Sincerely,

Daniel J. Cozza, Crandon Mine Project Manager
U.S. Environmental Protection Agency

enclosure:

cc:

Herb Nelson/Mary Manydeeds, BIA
Christine Hansen, FCP
Ann McCammon Soltis, GLIFWC
John Coleman, GLIFWC
Doug Cox, Menominee
Phil Seem, Menominee
Laura Manthe, Oneida
Greg Bunker, SBM
Tina VanZile/Roman Ferdinand, Mole Lake
Joel Trick, USFWS
Bill Tans, WDNR
Gordon Reid, NMC